

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LG CAPITAL FUNDING, LLC,

Plaintiff,

-against-

VOLT SOLAR SYSTEMS, INC. formerly
known as FIRST POWER AND LIGHT, INC.,

Defendant.

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MATSUMOTO, United States District Judge:

On March 18, 2015, plaintiff LG Capital Funding, LLC ("LG") commenced this action against defendant Volt Solar Systems, Inc. ("Volt"). (ECF No. 1, Complaint ("Compl.").) LG filed proof of service of the summons and the Complaint on May 29, 2015. (See ECF No. 6, Affidavit of Service.) LG alleges breach of contract as a result of Volt's failure to make payments due and owing on three promissory notes (the "Promissory Notes") entered into between the parties. (See *generally*, Compl.) With respect to each of the Promissory Notes, Volt promised to pay LG interest on the principal balance at a rate of eight percent (8%) per annum from the date of issue ("Issue Date") until the date of maturity ("Maturity Date"), with the accrued interest becoming due and payable on the Maturity Date. (Compl. ¶¶ 10, 31, 44.) The Promissory Notes

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

15-CV-1404 (KAM) (VMS)

further provide that any amount of principal or interest on the Promissory Notes that is unpaid at the Maturity Date shall bear interest at the default rate of twenty-two percent (22%) per annum from the Maturity Date until the same is paid. (*Id.* ¶¶ 20, 37, 54.)

Volt has not answered the Complaint or otherwise defended this action. The Clerk of Court issued a certificate of default against defendant on June 11, 2015. (See ECF No. 9, Clerk's Entry of Default dated 6/11/2015.) Plaintiff moved for entry of default judgment against Volt on October 8, 2015. (ECF No. 12, Motion for Default Judgment.) On April 8, 2016, the court referred plaintiff's motion for default judgment to Magistrate Judge Vera M. Scanlon for a Report and Recommendation. (See Order Referring Motion dated 4/8/2016.)

On August 15, 2016, Judge Scanlon issued a Report and Recommendation in which she recommended the court award plaintiff default judgment for \$328,226.18 in damages, plus interest accruing at the 22% default interest rate, and \$7,765 in attorneys' fees and costs. (ECF No. 13, Report and Recommendation ("R&R").) The damages amount includes \$121,994.32 for failure to pay the First Promissory Note, plus interest; \$119,978.73 for failure to pay the Second Promissory Note, plus interest; and \$86,253.13 for failure to pay the Third Promissory Note, plus interest. (*Id.* at 24.) Pursuant to the

express terms of the Promissory Notes, Magistrate Judge Scanlon calculated damage amounts owed for each Promissory Note by adding together: (1) the principal amount of the Promissory Note, (2) the interest accrued on the principal amount at 8% interest from the Issue Date until the Maturity Date, and (3) the interest accrued at the 22% default rate since the Maturity Date. (*Id.*)

The Report and Recommendation, which was mailed to defendant on August 15, 2016, notified the parties of the right to file written objections within seventeen (17) days. (R&R at 25.)¹ The period for filing objections has now expired, and no objections to Judge Scanlon's R&R have been filed.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

¹ The Federal Rules of Civil Procedure require a party to file written objections to a magistrate judge's report and recommendation within fourteen days after being served, or within seventeen days if the party is served by mail. See Fed. R. Civ. P. 72(b); Fed. R. Civ. P. 6(d).

Upon careful consideration of the record and Judge Scanlon's thorough and well-reasoned Report and Recommendation, and having received no objections to said report, this court hereby affirms and adopts the findings of the Report and Recommendation, with the exception of those relating to the calculation of damages.

The court calculates damages as follows. With respect to the First Promissory Note, LG is awarded the principal amount of **\$76,500.00**, plus: (i) **\$4,325.92** in interest that accrued on the unpaid principal amount at the rate of 8% per annum for the 258 days between the Issue Date and the Maturity Date; and (ii) **\$42,081.90** in interest that has accrued on the amount due and owing on the Maturity Date [\$80,825.92] at the default rate of 22% per annum for the 870 days between the Maturity Date and the date of this Order; and (iii) an additional **\$48.37 in interest per day** from September 9, 2016 until the date that Volt commences repayment, at which point default interest shall be recalculated in accordance with the provisions of Note 1.

With respect to the Second Promissory Note, LG is awarded the principal amount of **\$76,500.00**, plus: (i) **\$4,578.21** in interest that accrued on the unpaid principal amount at the rate of 8% per annum for the 273 days between the Issue Date and the Maturity Date; and (ii) **\$40,122.27** in interest that has accrued on the amount due and owing on the Maturity Date

[\$81,078.21] at the default rate of 22% per annum for the 821 days between the Maturity Date and the date of this Order; and (iii) an additional **\$48.87 in interest per day** from September 9, 2016 until the date that Volt commences repayment, at which point default interest shall be recalculated in accordance with the provisions of Note 2.

With respect to the Third Promissory Note, LG is awarded the principal amount of **\$55,000.00**, plus: (i) **\$3,289.65** in interest that accrued on the unpaid principal amount at the rate of 8% per annum for the 273 days between the Issue Date and the Maturity Date; and (ii) **\$28,841.73** in interest that has accrued on the amount due and owing on the Maturity Date [\$58,289.65] at the default rate of 22% per annum for the 821 days between the Maturity Date and the date of this Order; and (iii) an additional **\$35.13 in interest per day** from September 9, 2016 until the date that Volt commences repayment, at which point default interest shall be recalculated in accordance with the provisions of Note 3.

In addition to the foregoing amounts awarded pursuant to the Promissory Notes, LG is awarded \$7,765.00 in attorneys' fees and costs.

Conclusion

Judgment should be entered consistent with this Order for plaintiff and against defendant. The Clerk of Court is respectfully requested to mail a copy of the judgment and this Order to defendant at its last known address, note service on the docket, and close this case.

SO ORDERED.

Dated: Brooklyn, New York
September 9, 2016

/s/
KIYO A. MATSUMOTO
United States District Judge